



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Driggs Corporation

File: B-258795

Date: February 13, 1995

Leonard A. Sacks, Esq., for the protester.
David Hilton Wise, Esq., for Lobo Construction Company, an interested party.
Col. Thomas F. Brown, Department of the Air Force, for the agency.
Wm. David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

A low lump-sum bid for an item that exceeds the solicitation statutory cost limitation may be corrected based on the bidder's claim of a mistake in bid where clear and convincing evidence of the existence of the mistake and the intended bid price has been furnished to the agency.

DECISION

The Driggs Corporation protests the award made to Lobo Construction Company on the basis of Lobo's corrected bid price under invitation for bids (IFB) No. F49642-94-B-A108, issued by the Department of the Air Force for road improvements at Andrews Air Force Base, Maryland. Driggs contends Lobo's bid was nonresponsive and should have been rejected because one of its bid item prices was greater than the statutory cost limitation.

We deny the protest.

Bidders were required to submit total prices for two bid items. Each item was divided into sub-items which required either single lump-sum prices or unit and total prices based upon stated estimated quantities. The IFB advised bidders that the total price for item 1, which included two lump-sum and one estimated-quantities sub-items, by statute could not exceed \$300,000 and that any bid that did exceed this cost limitation would be rejected. Seven bids were opened on the

August 22, 1994, bid opening date. Lobo was the low bidder with a total price for both items of \$712,750. Its total price of \$299,800 on item 1 was within the \$300,000 cost limitation as required.


A review of Lobo's bid, however, revealed a discrepancy in item 1: Lobo's unit price of \$18, when multiplied by the estimated quantity of 5,000 for the third sub-item of item 1, results in an extended price of \$90,000 rather than the \$89,000 set out in Lobo's bid. A price of \$90,000 for that sub-item would have meant that Lobo's total price for item 1 exceeded the \$300,000 cost limitation by \$800. Lobo explained that the \$89,000 price was its intended price for the sub-item; it submitted workpapers to show this and to show how it had first calculated its total price in order to comply with the price limitation and then had erroneously computed the \$18 unit price based on the \$89,000 price total by failing to set its calculator for a price to the nearest cent rather than to the nearest whole dollar. Lobo explained that its intended unit price was \$17.80 which, when multiplied by the 5,000 quantity, results in the \$89,000 total. It demonstrated how the calculator functioned and produced this error. In view of this explanation, documentation, and demonstration, the agency made award to Lobo based on the total price as shown in Lobo's bid. Driggs, the second-low bidder with a total price of \$757,400, then protested the award to our Office. Performance of the contract has been stayed pending resolution of the protest.

Driggs contends that, in resolving discrepancies between unit and extended prices, the unit price generally controls. Thus, if the sub-item unit price is correctly extended, the total price for item 1 exceeds the statutory cost limitation, and Lobo's bid should have been rejected as nonresponsive.

Normally, a bid whose prices exceed applicable statutory cost limitations must be rejected unless the limitations have been properly waived for the procurement, Ward Constr. Co., B-240064, July 30, 1990, 90-2 CPD ¶ 87. However, the government's interest in awarding a contract within the bounds of the statutory cost limitation can plainly be protected without prejudice to other bidders by permitting correction of legitimate mistakes in bid involving a statutory cost limitation under normal bid correction procedures. Wynn Constr. Co., B-220649, Feb. 21, 1986, 86-1 CPD ¶ 184, aff'd, Wynn Constr. Co.--Recon., B-220649.2, Apr. 14, 1986, 86-1 CPD ¶ 360; see also Alcon Div. of Boyles Bros. Drilling Co., B-241058, Jan. 16, 1991, 91-1 CPD ¶ 46. Consequently, we believe that the agency could properly consider Lobo's mistake claim.

We also conclude that the agency's decision to permit correction of Lobo's bid and to make award on the basis of that corrected bid was proper. We agree with the agency that there is clear and convincing evidence that a mistake occurred and of the bid price actually intended--Lobo has offered a reasonable explanation of how the error occurred and what its intended price was and Lobo's workpapers clearly showed that it had computed and intended to offer a total lump sum of \$89,000 for the sub-item. Lobo was also able to demonstrate how the error in the unit price had occurred with its calculator set to round off to the nearest dollar. Because the weight to be given to the evidence in support of an asserted mistake is a question of fact, we will not disturb an agency's determination that an alleged mistake is supported by clear and convincing evidence unless there is no reasonable basis for it. Lambert Roofing & Constr. Co., Inc., B-255183, Feb. 14, 1994, 94-1 CPD ¶ 103. On this record, we have no basis to conclude that the agency's determination is without a reasonable basis.

The protest is denied.


for Robert P. Murphy
General Counsel